



DEPARTMENT OF BUILDING AND DEVELOPMENT  
STAFF REPORT

**PLANNING COMMISSION PUBLIC HEARING**

**DATE OF HEARING:** December 17, 2007

**CASE NUMBER/CASE NAME:** ZOAM 2007-0006,  
*Zoning Ordinance Amendment to Increase Fines for Civil Violations*  
**DECISION DEADLINE:** NONE

**ELECTION DISTRICT:** Countywide

**PROJECT PLANNER:** Rory Toth  
Mark Stultz

**EXECUTIVE SUMMARY**

On October 2, 2007 the Board of Supervisors adopted a Resolution of Intent to Amend the Revised 1993 Loudoun County Zoning Ordinance in order to amend Section 6-504(A) Civil Violations, to enable the maximum fines specified therein to be consistent with the maximum fines permitted pursuant to the enabling authority granted in Section 15.2-2209 of the Code of Virginia. See Attachment 3.

The amendment proposes revisions to Section 6-504(A) to increase the fines for civil violations from \$100.00 to \$200.00 for the first charge and from \$250.00 to \$500.00 for each additional charge.

**I. BACKGROUND**

At their September 19, 2007 Meeting, the Board of Supervisors directed staff to prepare a resolution of intent to amend the zoning ordinance in order to take advantage of new Code of Virginia enabling authority allowing an increase in fines for civil violations. In order to enable the maximum fines specified in Section 6-504(A) to be consistent with the maximum fines permitted pursuant to the enabling authority granted in Section 15.2-2209 of the Code of Virginia, the Board of Supervisors approved the Resolution of Intent to Amend on October 2, 2007.

**II. SUMMARY OF PROPOSED TEXT CHANGES**

The following is a brief description of the Amendment to the Ordinance. Attachments 1 and 2 include the proposed draft text, showing the specific revisions.

**A. Revise Section 6-500 Enforcement and Penalties.**

**Section 6-504(A) Civil Violations** is proposed to be revised to increase civil fines from \$100.00 to \$200.00 for the first charge and from \$250.00 to \$500.00 for each additional charge.

### III. ISSUES

The Planning Commission may desire to consider a more general approach to the language in this Section to simply state that civil violations shall be punishable by the maximum fine as established by 15.2-2209 of the Code of Virginia for the first charge and for each additional charge, as opposed to stating the fines in dollar amounts. The rationale behind adopting more general language is that in the event the Code of Virginia is amended in the future, a ZOAM will not be required to change the Zoning Ordinance.

### IV. ZONING ORDINANCE CRITERIA FOR APPROVAL

Section 6-1211(D) of the Zoning Ordinance states " ... for an amendment of the text of this Ordinance, the Planning Commission shall consider the following matters ... ":

Standard      *Whether the proposed text amendment is consistent with the Comprehensive Plan.*

Analysis      This Amendment is proposed for the purpose of implementing the Comprehensive Plan with the purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the territory which will, in accordance with present and probable future needs and resources, best promote the health, safety, morals, order, convenience, prosperity, and general welfare of the inhabitants. In addition, policies in this document provide guidance for development decisions. The Revised General Plan provides the basis for evaluating land-development proposals. The Plan is the foundation for amendments to the Zoning and Subdivision ordinances to ensure that the County's goals are implemented through the regulatory process.

This Amendment is found to be consistent with the Comprehensive Plan.

Standard      *Whether the proposed text amendment is consistent with the intent and purpose of this Ordinance.*

Analysis      The intent of this ordinance is defined under Section 1-102, which states: "*This Ordinance is enacted in order to promote the health, safety and welfare of the residents of Loudoun County and to implement the Loudoun County Comprehensive Plan*". Subsection (A), further states that the Ordinance is designed to "*Guide and regulate the orderly growth, development and redevelopment of Loudoun County in accordance with a well-considered plan and with long-term objectives, principles and standards deemed beneficial to the interest and welfare of the people.*" In addition, respectively, Subsections (G) and (I) state that the Ordinance is designed to "*Expedite the provision of adequate police and fire protection, safety from crime, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports and other public requirements*" and "*protect against one or more of the following: overcrowding of land, undue density of population in relation to the community facilities existing or available, obstruction of light and air, danger and congestion in travel and transportation, or loss of life, health, or property from fire, flood,*

*panic or other dangers."*

This Amendment is found to be consistent with the intent and purpose of the Zoning Ordinance.

**V. RECOMMENDED TEXT**

Attachments 1 and 2 include the proposed draft text language, dated November 7, 2007.

**VI. STAFF RECOMMENDATION**

Staff recommends that the Planning Commission forward ZOAM-2007-0006 to the Board of Supervisors with the recommendation of approval, using the draft text in Attachment 2, pending anything to the contrary from the County Attorney's Office.

**VII. SUGGESTED MOTIONS**

A. I move that the Planning Commission forward ZOAM 2007-0006, to revise Section 6-504(A), of the Revised 1993 Loudoun County Zoning Ordinance to increase civil fines from \$100.00 to \$200.00 for the first charge and from \$250.00 to \$500.00 for each additional charge, as shown in Attachment 1, Pages A1-1 through A1-3, to the Board of Supervisors with a recommendation for approval.

Or

B. I move that the Planning Commission forward ZOAM 2007-0006, to revise Section 6-504(A), of the Revised 1993 Loudoun County Zoning Ordinance such that civil fines shall be punishable by the maximum fines as established by Section 15.2-2209 of the Code of Virginia for the first charge and for each additional charge, as shown in Attachment 2, Pages A2-1 through A2-3, to the Board of Supervisors with a recommendation for approval.

Or

C. I move an alternative motion

**VIII. ATTACHMENTS**

Number	Description	Pages
1.	Recommended Text for Section 6-504(A), Civil Violations, dated November 7, 2007(with specific dollar amounts).	A1-1-A1-3
2.	Recommended Text for Section 6-504(A), Civil Violations, dated November 7, 2007(with reference to State Code for fine amounts).	A2-1-A2-3

3. Resolution of Intent to Amend (including copy teste dated October 2, 2007 and the Memorandum dated September 27, 2007 from the Zoning Administrator) A3-1-A3-5

***DRAFT DECEMBER 17, 2007 PLANNING COMMISSION PUBLIC HEARING***

**Section 6-500            Enforcement and Penalties.**

**6-501            Zoning Administrator.** The Zoning Administrator shall have the authority and the duty to ensure that all buildings and structures and the use of all land complies with the provisions of this Ordinance.

**6-502            General Provisions.**

- (A)      Any building or structure erected contrary to any of the provisions of this Ordinance and any use of any building or land which is conducted, operated or maintained contrary to any of the provisions of this Ordinance or the provisions of any approval granted by the County under this Ordinance shall be a violation of this Ordinance and the same is hereby declared to be unlawful.
- (B)      Any person, whether owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this ordinance, or permits any such violation, or fails to comply with any of the requirements hereof, or who erects any building or structure or uses any building, structure or land in violation of the provisions of this Ordinance or the provisions of any approval granted by the County under this Ordinance shall be subject to the enforcement provisions of this Section.
- (C)      In addition to the remedies provided in this Section, the Zoning Administrator may initiate injunction, mandamus, abatement or any other appropriate action to prevent, enjoin, abate or remove any unlawful building, structure or use.
- (D)      Upon his becoming aware of any violation, the Zoning Administrator shall serve notice of such violation on the person committing or permitting the same, and the land owner, and if such violation has not ceased within such reasonable time as the Zoning Administrator has specified in such notice, he shall institute such action as may be necessary to terminate the violation.
- (E)      If the person responsible for the alleged violation denies that a violation exists, he may appeal the decision of the Zoning Administrator pursuant to the provisions of Section 6-1700 of this Ordinance.
- (F)      Whenever a violation occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the cause and basis thereof shall be filed with the Zoning Administrator. The Zoning Administrator shall record such complaint, investigate, and take action thereon as provided by this Ordinance.

ATTACHMENT 1

**Draft Date: November 7, 2007**

A1-1

**6-503****Criminal Violations.**

- (A) Any violation of the provisions of this Ordinance that results in physical harm or injury to any person shall be deemed a Class 2 criminal misdemeanor and, upon conviction thereof, shall be punishable by a fine of not more than \$1,000.00 for each separate offense. Each day during which the violation is found to have existed shall constitute a separate offense.
- (B) The designation of a particular violation of this Ordinance as a civil violation shall preclude criminal prosecution or sanctions.

**6-504****Civil Violations.**

- (A) Any violation of the provisions of this Ordinance other than those set forth in Section 6-503(A) shall be deemed a civil violation and, upon an admission of liability or finding of liability, shall be punishable by a fine of ~~\$100.00~~ \$200.00 for the first charge and ~~\$250.00~~ \$500.00 for each additional charge. Each day during which the violation is found to have existed shall constitute a separate offense. However, in no event shall specified violations arising from the same operative set of facts be charged more frequently than once in any ten (10) day period, and in no event shall a series of specified civil violations rising from the same operative set of facts result in civil penalties which exceed a total of \$5,000.00. Nothing in this subsection shall be construed as to prohibit the Zoning Administrator from initiating civil injunction procedures in cases of repeat offenses.
- (B) After the Zoning Administrator or his Deputy has issued a notice of violation on any person committing or permitting a violation of the Zoning Ordinance provisions enumerated in Section 6-504(E) and if such violation has not ceased within such reasonable time as is specified in such notice, the Zoning Administrator or his Deputy shall issue a summons and/or ticket to be issued personally upon such person or posted in a conspicuous location at the site of the violation. If a person complies in writing to a notice of violation, and agrees to cease said violation, no further fines shall be levied after the date of such agreement, provided such agreement is complied with.
- (C) The summons shall provide that any person summoned for a violation may elect to pay the civil penalty by making an appearance in person or in writing by mail to the County Treasurer's office at least 72 hours prior to the time and date fixed for trial and, by such appearance, may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. Such summons shall provide that a signature to an admission of liability shall have the same force and effect as a judgment

**Draft Date: November 7, 2007**

of court, however, an admission shall not be deemed a criminal conviction for any purpose.

- (D) If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided by law. A finding of liability shall not be deemed a criminal conviction for any purpose.

***DRAFT DECEMBER 17, 2007 PLANNING COMMISSION PUBLIC HEARING***

**Section 6-500            Enforcement and Penalties.**

**6-501            Zoning Administrator.** The Zoning Administrator shall have the authority and the duty to ensure that all buildings and structures and the use of all land complies with the provisions of this Ordinance.

**6-502            General Provisions.**

- (A)      Any building or structure erected contrary to any of the provisions of this Ordinance and any use of any building or land which is conducted, operated or maintained contrary to any of the provisions of this Ordinance or the provisions of any approval granted by the County under this Ordinance shall be a violation of this Ordinance and the same is hereby declared to be unlawful.
- (B)      Any person, whether owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this ordinance, or permits any such violation, or fails to comply with any of the requirements hereof, or who erects any building or structure or uses any building, structure or land in violation of the provisions of this Ordinance or the provisions of any approval granted by the County under this Ordinance shall be subject to the enforcement provisions of this Section.
- (C)      In addition to the remedies provided in this Section, the Zoning Administrator may initiate injunction, mandamus, abatement or any other appropriate action to prevent, enjoin, abate or remove any unlawful building, structure or use.
- (D)      Upon his becoming aware of any violation, the Zoning Administrator shall serve notice of such violation on the person committing or permitting the same, and the land owner, and if such violation has not ceased within such reasonable time as the Zoning Administrator has specified in such notice, he shall institute such action as may be necessary to terminate the violation.
- (E)      If the person responsible for the alleged violation denies that a violation exists, he may appeal the decision of the Zoning Administrator pursuant to the provisions of Section 6-1700 of this Ordinance.
- (F)      Whenever a violation occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the cause and basis thereof shall be filed with the Zoning Administrator. The Zoning Administrator shall record such complaint, investigate, and take action thereon as provided by this Ordinance.

**Draft Date: November 7, 2007**

ATTACHMENT 1 2

A2-1



**6-503****Criminal Violations.**

- (A) Any violation of the provisions of this Ordinance that results in physical harm or injury to any person shall be deemed a Class 2 criminal misdemeanor and, upon conviction thereof, shall be punishable by a fine of not more than \$1,000.00 for each separate offense. Each day during which the violation is found to have existed shall constitute a separate offense.
- (B) The designation of a particular violation of this Ordinance as a civil violation shall preclude criminal prosecution or sanctions.

**6-504****Civil Violations.**

- (A) Any violation of the provisions of this Ordinance other than those set forth in Section 6-503(A) shall be deemed a civil violation and, upon an admission of liability or finding of liability, shall be punishable by ~~the maximum a fines as established by Section 15.2-2209 of the Code of Virginia of \$100.00~~ for the first charge and ~~\$250.00~~ for each additional charge. Each day during which the violation is found to have existed shall constitute a separate offense. However, in no event shall specified violations arising from the same operative set of facts be charged more frequently than once in any ten (10) day period, and in no event shall a series of specified civil violations rising from the same operative set of facts result in civil penalties which exceed a total of \$5,000.00. Nothing in this subsection shall be construed as to prohibit the Zoning Administrator from initiating civil injunction procedures in cases of repeat offenses.
- (B) After the Zoning Administrator or his Deputy has issued a notice of violation on any person committing or permitting a violation of the Zoning Ordinance provisions enumerated in Section 6-504(E) and if such violation has not ceased within such reasonable time as is specified in such notice, the Zoning Administrator or his Deputy shall issue a summons and/or ticket to be issued personally upon such person or posted in a conspicuous location at the site of the violation. If a person complies in writing to a notice of violation, and agrees to cease said violation, no further fines shall be levied after the date of such agreement, provided such agreement is complied with.
- (C) The summons shall provide that any person summoned for a violation may elect to pay the civil penalty by making an appearance in person or in writing by mail to the County Treasurer's office at least 72 hours prior to the time and date fixed for trial and, by such appearance, may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. Such summons shall provide that a signature to an admission of liability shall have the same force and effect as a judgment

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- (D) If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided by law. A finding of liability shall not be deemed a criminal conviction for any purpose.

**Draft Date: November 7, 2007**



Loudoun County, Virginia

[www.loudoun.gov](http://www.loudoun.gov)

Office of the County Administrator

1 Harrison Street, S.E., 5th Floor, P.O. Box 7000, Leesburg, VA 20177-7000

Telephone (703) 777-0200 • Fax (703) 777-0325

At a business meeting of the Board of Supervisors of Loudoun County, Virginia, held in the County Government Center, Board of Supervisors' Meeting Room, 1 Harrison St., S.E., Leesburg, Virginia, on Tuesday, October 2, 2007 at 9:30 a.m.

IN RE: COMMITTEE OF THE WHOLE/IMMIGRATION ISSUES/HOUSING  
OVERCROWDING – INTENT TO AMEND THE ZONING ORDINANCE

Mr. York moved that the Board of Supervisors adopt the Resolution of Intent to Amend the Revised 1993 Loudoun County Zoning Ordinance contained in Attachment A of the September 25, 2007 memo from the Zoning Administrator for the purpose of amending "Enforcement and Penalties" as contained in Section 6-504, Civil Penalties.

Seconded by Mr. Tulloch.

Voting on the Motion: Supervisors Burton, Clem, Delgaudio, Kurtz, Snow, Staton, Tulloch, Waters, and York - Yes; None – No.

COPY TESTE:

DEPUTY CLERK FOR THE LOUDOUN  
COUNTY BOARD OF SUPERVISORS

D:\my documents\2007 copyteste\10-02-07 bos-3e-cow immigration issues Housing Overcrowding – intent to amend the zoning ordinance

ATTACHMENT 3

A3-1

**BOARD OF SUPERVISORS OF LOUDOUN COUNTY**

**RESOLUTION OF INTENT TO AMEND THE ZONING ORDINANCE**

WHEREAS, the Board of Supervisors wishes to initiate amendments to the Loudoun County Zoning Ordinance in furtherance of the purposes of zoning as set out in § 15.2-2283 of the Code of Virginia and to further implement the comprehensive plan; and

WHEREAS, the Board of Supervisors wishes to initiate amendments to the Loudoun County Zoning Ordinance to update the "Enforcement and Penalties" provisions consistent with the enabling authority granted in Section 15.2-2209 of the Code of Virginia;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors states its intention to amend the Loudoun County Zoning Ordinance to adopt new or revised provisions on the following:

Amend Section 6-504 Civil Violations to enable the maximum fines specified therein to be consistent with the maximum fines permitted pursuant to the enabling authority granted in Section 15.2-2209 of the Code of Virginia.

BE IT FURTHER RESOLVED that (1) these amendments are in furtherance of the public necessity, convenience, general welfare, and good zoning practice; (2) that these matters be referred to the Planning Commission for preparation of ordinances; and (3) the proposed amendments on these matters be brought forward for notice, hearing, Planning Commission recommendation and Board of Supervisors' action.

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## COUNTY OF LOUDOUN

### DEPARTMENT OF BUILDING AND DEVELOPMENT

#### MEMORANDUM

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**DATE:** September 25, 2007

**TO:** Members of the Board of Supervisors

**FROM:** Melinda M. Artman, Zoning Administrator

**SUBJECT:** Resolution of Intent to Amend zoning violation fines

At its September 19, 2007 meeting, the Board directed staff to prepare a resolution of intent to amend the zoning ordinance in order to take advantage of new Code of Virginia enabling authority allowing fines for violations of regulations regarding the number of unrelated persons in a single-family dwelling. These fines result from criminal misdemeanor convictions.

In 2000, penalties for most the Zoning Ordinance violations were changed from misdemeanors to civil fines. Although the Zoning Ordinance retains criminal violations, they are limited to violations that result in physical harm or injury to a person. Staff notes that the Code of Virginia was also recently amended to increase the civil fines. If the Zoning Ordinance includes a particular type of violation in the schedule of civil penalties, it precludes prosecution as a criminal misdemeanor. Accordingly, the Board needs to elect civil or criminal enforcement of the zoning provisions regulation the number of unrelated persons occupying a single family dwelling. Currently, these violations are enforced under the civil penalties provisions. There are pros and cons to each type of violation:

#### Criminal Violations

1. Prosecuted in court by the Commonwealth Attorney;
2. Require a higher standard of evidence than a civil prosecution;
3. Fines assessed can be as little at \$10 or as high as \$2000 at the judge's discretion;
4. Proceeds from fines accrue to the state;
5. Convictions do not result in a jail sentence.

A3-3

Civil Violations

1. Staff issues a Notice of Violation, followed by a summons/ticket assessing a fine;
2. Zoning Ordinance allows \$100 fine for first offence, \$250 for second and subsequent offences;
3. Code of Virginia now allows \$200 fine for first offence, \$500 for second and subsequent offences;
4. Maximum cumulative fine under both the Zoning Ordinance and Code of Virginia is \$5000;
5. County Attorney's office initiates action when maximum fines have been maximized and an injunction sought from the Courts;
6. Courts can cite violator for contempt and order jail time;
7. Burden of proof is considerably less than criminal prosecution;
8. Proceeds from fines accrue to the county.

The County may pursue either type of violation but once chosen, may not change the type of violation. In most circumstances, it may be more advantageous to pursue civil penalties as compliance may be achieved in a shorter timeframe and the County has more control over the overall timeframe. Seeking resolution of civil penalties rarely involves the Court or staff in the Commonwealth Attorney's office. Criminal prosecution may be advantageous where the number of unrelated persons is the only violation, and where evidence is readily available and easily documented.

Staff respectfully suggests that the Board adopt the attached Resolution of Intent to Amend to increase the amount of civil fines as contained in Attachment A. Staff has also included a Resolution of Intent to Amend to create a criminal misdemeanor for violations of the number of unrelated persons in a single family dwelling as Attachment B.

**BOARD OF SUPERVISORS OF LOUDOUN COUNTY**

**RESOLUTION OF INTENT TO AMEND THE ZONING ORDINANCE**

WHEREAS, the Board of Supervisors wishes to initiate amendments to the Loudoun County Zoning Ordinance in furtherance of the purposes of zoning as set out in § 15.2-2283 of the Code of Virginia and to further implement the comprehensive plan; and

WHEREAS, the Board of Supervisors wishes to initiate amendments to the Loudoun County Zoning Ordinance to update the "Enforcement and Penalties" provisions consistent with the enabling authority granted in Section 15.2-2286 of the Code of Virginia;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors states its intention to amend the Loudoun County Zoning Ordinance to adopt new or revised provisions on the following:

Amend Section 6-503 Criminal Violations to specify that it shall be a criminal misdemeanor to violate the provisions of the Zoning Ordinance regulating the number of unrelated persons occupying a single family dwelling; that such violation shall be punishable as a criminal misdemeanor subject to a fine of up to \$2,000; and that the failure to abate the violation within the specified time period shall be punishable by a fine of up to \$2,000, with any such failure during any succeeding 10-day period constituting a separate misdemeanor offense for each such 10-day period punishable by a fine of up to \$2,500; and

BE IT FURTHER RESOLVED that (1) these amendments are in furtherance of the public necessity, convenience, general welfare, and good zoning practice; (2) that these matters be referred to the Planning Commission for preparation of ordinances; and (3) the proposed amendments on these matters be brought forward for notice, hearing, Planning Commission recommendation and Board of Supervisors' action.